

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Civil Action No. 05-11395-RCL

PATRICIA BERGEVINE,  
Plaintiff,

v.

PEASE & CURREN, INC, PEASE & CURREN  
MATERIALS, INC., FRANCIS H. CURREN, JR.,  
ROBERT H. PEASE, JR., FRANCIS H. CURREN,  
III A/K/A KIP CURREN AND MEREDITH A.  
CURREN.

Defendants.

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**PLAINTIFF’S MOTION TO PRECLUDE DEFENDANTS  
FROM INTRODUCING EVIDENCE AS TO DAMAGES AND  
FOR SANCTIONS DUE TO SPOILIATION**

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**NOW COMES** the Plaintiff Patricia Bergevine (the “Plaintiff”) and hereby moves this Honorable Court to sanction the Defendants Pease & Curren, Inc., Pease & Curren Materials, Inc., Francis H. Curren, Jr., Robert H. Pease, Jr., Francis H. Curren, III A/K/A Kip Curren and Meredith A. Curren’s (the “Defendants”) for the destruction of relevant evidence by precluding them from introducing evidence as to damages. In support hereof, Plaintiff submits Plaintiff’s Memorandum in Support of Plaintiff’s Motion for Spoliation.

**STATEMENT OF COMPLIANCE**

The Plaintiff hereby certifies that counsel for the Plaintiff has consulted with counsel for the Defendants both during a deposition and via telephone pursuant to LR, D.MASS. 7.1(A). Plaintiff’s Counsel has been informed that the Defendants will not produce the requested documents primarily because the Defendants have indicated that the documents have been

destroyed or deleted.

### **REQUEST FOR ORAL ARGUMENT**

Pursuant to LR, D.MASS. 7.1(D), the Plaintiff respectfully requests a hearing on the matter.

### **CONCLUSION**

Based on the foregoing, the Plaintiff respectfully requests that this Honorable Court allow Plaintiff's Motion to Preclude Defendants from Introducing Evidence as to Damages and for Sanctions due to Spoliation.

Respectfully submitted,  
PATRICIA BERGEVINE,  
By her attorneys,

/s/ Gregory J. Aceto  
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**Certificate of Service**

I hereby certify that on October 4, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record in the matter via e-mail. I further certify that copies will be sent via U.S. Mail to all counsel in the matter who are not registered with the CM/ECF system.

/s/ Gregory J. Aceto  
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Attorney for Plaintiff Patricia Bergevine